THE HONOURABLE SRI JUSTICE V.ESWARAIAH

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Date:14-02-2006

WRIT PETITION Nos.3115 OF 2005 AND 3116 OF 2005

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WRIT PETITION No.3115 OF 2005

BETWEEN:

D.Venkatarama Sharma

…Petitioner

And

The Station House Officer, Vanastalipuram Police Station, Vanastalipuram, Ranga Reddy District and another.

…Respondents

…

WRIT PETITION No.3116 OF 2005

BETWEEN:

D.Venkatarama Sharma

…Petitioner

And

The Station House Officer, Saroornagar Police Station, Saroornagar, Ranga Reddy District and another.

…Respondents

COMMON ORDER:

Both these writ petitions are filed by the same petitioner, raising similar contentions to issue a writ of mandamus, declaring the action of the first respondent in both the writ petitions in initiating criminal proceedings in Crime No.691 of 2004 on the file of the Police Station, Vanastalipuram, Ranga Reddy District and in Crime No.950 of 2004

on the file of the Police Station, Saroornagar, Ranga Reddy District respectively, as arbitrary, illegal and violative of Articles 14 and 21 of the Constitution of India.

W.P.NO.3115 OF 2005:

On a complaint lodged by one C.R.Mohan Rao-the second respondent in W.P.No.3115 of 2005 on 23-11-2004 against the petitioner, alleging that in the month of June, 2002, when he was in search of funds for developing Resorts in his agricultural land situated at Gurramguda village of Hayathnagar Mandal, Ranga Reddy District and moving around the Banks for obtaining loan for that purpose, Mr.Anand Raj, resident of Koti, Hyderabad accosted him and assured to provide funds through Non Resident of India (NRI) funds and took him to the petitioner who is a resident of Bangalore. During the course of his contacts, the petitioner stated that his NRI funds were stayed by Foreign Exchange Management (FEMA) Board, Reserve Bank of India, Mumbai and made him to believe to provide Rs.10 crores through his NRI funds for developing his business and directed the complainant to give financial assistance to get release of his funds. Believing the same that the petitioner would arrange funds for his business development, the complainant paid a sum of Rs.10 lakhs on 11-12-2002 and the petitioner executed an understanding on Rs.100/- Non-Judicial Stamp paper undertaking to provide him the NRI funds. On his further visit to Bangalore many times on the calls of the petitioner and Anand Raj, the petitioner requested the complainant to prove further financial assistance to get release his funds from FEMA Board and gave assurance that he would provide double the amount to the amount given by the complainant on release of his NRI funds apart from providing loan of Rs.10 crores with the lowest interest rate for developing his business and in that process, the petitioner issued cheques to the complainant. Whenever he paid the amount, the petitioner issued cheques double the amount paid by him and he used to give back the previous cheques by obtaining fresh cheques. Finally, the petitioner issued a cheque bearing No.006261, dated 11-

6-2003 for Rs.10 crores drawn on HDFC Bank Limited, Bangalore. By that time, the complainant paid about Rs.1,90,00,000/-. During the process of the complainant's visit to Bangalore, he came to know that the petitioner did similar acts with many others. The petitioner and said Anand Raj have been evading to meet the petitioner on one pretext or other and he came to know that the petitioner was arrested by the Bangalore police in criminal cases for the similar acts. It is alleged that the petitioner looted about Rs.1.90 crores from the complainant with false assurance to provide him NRI funds. To provide the funds as asked by the petitioner, the complainant disposed of his landed property and brought loans from his relatives and friends and the petitioner and Anand Raj looted the said money and they have cheated by collecting the said amount. Therefore, a request was made to take appropriate action for cheating him.

On the said complaint, the Sub Inspector of Police, Vanastalipuram registered a case in Crime No.691 of 2004 for the offence punishable under Sections 406, 420 and 468 of the Indian Penal Code and issued First Information Report (FIR).

To quash the said F.I.R., the petitioner has filed this writ petition, contending that he is a businessman and resident of Bangalore, and the complainant along with others kidnapped the petitioner on 16-11-2004 and obtained signatures on the blank cheques and on the complaint filed by the petitioner's wife, the police of Cubbon Park, Bangalore, registered a case in Crime No.275 of 2004 on 17-11-2004 and the registration of Crime No.691 of 2004 here is nothing but a counter blast to the complaint given by the wife of the petitioner in Cr.No.275 of 2004 of Cubbon Park Police Station, Bangalore. The complainant is not solvent to advance a sum of Rs.1.90 crores. Pursuant to the said complaint, the police arrested the petitioner and detained for a period of 45 days. He was released on conditional bail granted on 3-2-2005 in Crl.M.P.No.960 of 2005 in Crime No.961 of 2004 on the file of the Additional Judicial Magistrate of First Class, Hyderabad, East and North, Ranga Reddy District and the entire reading of the complaint does not disclose the commission of offence

under the said provisions. It is further stated that the petitioner has not initiated any proceedings under Section 138 of the Negotiable Instruments Act and therefore, the complainant is not entitled to file a complaint for the alleged offence said to have been committed under Sections 406, 420 and 468 of the Indian Penal Code.

The complainant i.e., the second respondent filed a counter stating that non-initiation of proceedings under Section 138 of the Negotiable Instruments Act for bouncing the cheques issued by the petitioner cannot constitute a legal ground to quash the proceedings. It is open for the complainant to choose his remedies of initiating proceedings under Section 138 of the Negotiable Instruments Act or under the provisions of Indian Penal Code. Therefore, he is resorted to lodge a complaint and accordingly, the said crime was registered for the offence punishable under Sections 406, 420 and 468 of the Indian Penal Code and took up investigation. It is stated that no prima facie case is made out to quash the said proceedings.

The investigating officer/first respondent filed a counter, stating that during the course of investigation, it was revealed that the petitioner was involved in various cases in the limits of Hyderabad, Vijayawada of Krishna District and Bangalore of Karnataka State etc. The investigating officer also contacted Vijayawada City Police and learnt that Vijayawada Police arrested the petitioner on 18-12-2004 in a case filed under Negotiable Instruments Act by some others. After obtaining requisition of Prisoner Transit (PT) Warrant from the Court of Additional Judicial Magistrate of First Class, L.B.Nagar, Ranga Reddy District, he executed the warrant and produced the petitioner before the said Court and remanded him to judicial custody. During the course of interrogation, the petitioner made certain confessions. The copies of documents, original cheques, undertaking given by the petitioner were also collected and sent to the concerned officials of Reserve Bank of India, Standard Chartered Bank etc., to know their genuinity.

The learned counsel appearing for the respondents submit that the

documents relied on by the petitioner making the complainant to believe have been found incorrect, false and forged by the petitioner as the writings, signatures of the petitioner were that of the petitioner alone. Therefore, it is stated that there is a prima facie case of cheating. With regard to the allegation of kidnapping, the same has been denied and it is stated that the present case is not a counter case to the case registered on the complaint given by the wife of the petitioner.

W.P.NO.3116 OF 2005:

The second respondent D.Divakar Rao in W.P.No.3116 of 2005 filed a similar complaint alleging that an amount of Rs.25 lakhs was collected from him and for double the said amount, a cheque bearing No.483194 dated 10-7-2002 for Rs.50,00,000/- dranw on Standard Chartered Bank was issued assuring the complainant to provide him the financial assistance to the tune of Rs.1 crore besides giving double the amount of Rs.25 lakhs paid by him. On the similar complaint, a case in Crime No.950 of 2004 was registered for the offence punishable under Sections 420 and 406 of the Indian Penal Code.

The complainant filed a counter denying all the allegations, similar to that of the counter filed in W.P.No.3115 of 2004.

The questions that arise for consideration are:

1. Whether merely because the complainants have not initiated the proceedings under Section 138 of the Negotiable Instruments Act for dishonour of the cheques, can it be said that the criminal proceedings initiated by them under the provisions of Indian Penal Code are not maintainable ?

2. Whether the learned Additional Judicial Magistrate of First Class, East and North, L.B.Nagar, Ranga Reddy District is having jurisdiction for trial of the said criminal cases ?

The learned counsel appearing for the petitioner submits that as no proceedings have been initiated under Section 138 of the Negotiable Instruments Act for dishonour of the cheques, criminal complaints filed under Sections 406, 420 and 468 of the Indian Penal Code are not maintainable and they are nothing but abuse of process of law. In support of his contention, he relied on the Judgment of the Apex Court in the case of **G.Sagar Suri and another Vs. State of U.P. and others.** The facts of the said case are that proceedings under Section 138 of the Negotiable Instruments Act were already initiated and during the pendency of the proceedings under Section 138 of the Negotiable Instruments Act, a complaint was lodged alleging that the said accused has committed offences under Sections 406 and 420 of the Indian Penal Code. In those circumstances, the Apex Court held that having initiated the proceedings under Section 138 of the Negotiable Instruments Act already by the complainant without making any allegation of corrupt practices and cheating by the accused and having stated in 138 proceedings that the complainant finance company advanced loans, which is essentially a commercial transaction and the cheques issued by the loanee were dishonoured and therefore, action has been taken under Section 138 of the Negotiable Instruments Act. But, nothing has been stated in 138 proceedings about the commission of offence under Sections 406 and 420 of the Indian Penal Code and the said offences have not been added in the complaint filed under Section 138 of the Negotiable Instruments Act. In those circumstances, the Apex Court held that as there was no answer as to why the said criminal action taken has not been mentioned in 138 proceedings, therefore, the complaint filed for the offence under Sections 406 and 420 of the Indian Penal Code is an abuse of process of law.

I am of the opinion that the aforesaid Judgment is of no help to the petitioner for the reason that the complainant has not initiated any action under Section 138 of the Negotiable Instruments Act and

therefore, it is open for the complainant to choose any one of the course either to file a complaint under Section 138 of the Negotiable Instruments Act or to take action for the offence punishable under Sections 406, 420 and 468 of the Indian Penal Code. It is also open for the complainant to initiate only the criminal proceedings under afore said Sections for the offence committed under the provisions of the Indian Penal Code. Therefore, the second mode of action initiated by the complainant cannot be found fault with or it can be said that it is an abuse of process of law.

It is further contended that the transaction predominantly is in civil nature and therefore, criminal prosecution is not maintainable. In support of his contention, the petitioner also relied on the Judgment of the Apex Court in the case of **Zandu Pharmaceutical Works Ltd. And others Vs. Mohd.Sharaful Haque and another**. That was a case pertaining to the appointment to the post of Area Manager, but he was appointed as Field Officer. Therefore, the grievance was that the person appointed was deceived by appointing him as Field Officer, but not as Area Manager, though he was assured that he would be appointed as Area Manager. Therefore, it constitutes an offence punishable under Sections 406 and 409 of the Indian Penal Code. The Apex Court quashed the complaint on the ground that taking cognizance was barred by limitation under Section 468(2)(c) of the Criminal Procedure Code and the Magistrate without referring to Sections 468 and 473 of the Code, taken cognizance though it was hit by limitation. Even on the factual position, the Apex Court satisfied that the complaint was nothing but a sheer abuse of process of law. The facts of the said case have absolutely no application to the facts of the present case.

The other contention raised by the learned counsel for the petitioner is that no cause of action arose in the Court of Additional Judicial Magistrate of First Class, East and North, L.B.Nagar, Ranga Reddy and the entire cause of action arose in Bangalore alone as per the reading of the complaint and therefore, the Court at L.B.Nagar, Ranga Reddy District has no jurisdiction to enquire and

trial of the matter. In support of his contention, he relied on a Judgment of the Apex Court in the case of **Y.Abraham Ajith and others Vs. Inspector of Police, Chennai and another**. In the said case, on facts, it was found that no part of cause of action arose in Chennai and therefore, the Magistrate concerned at Chennai had no jurisdiction to deal with the matter and therefore, the proceedings are quashed. Under Section 177 of the Criminal Procedure Code; every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. Under Section 178(b) of the Criminal Procedure Code; where an offence is committed partly in one local area and partly in another, the trial can take place in any one of the local areas.

It is stated by the complainant that he contacted Mr.Anand Raj who is a resident of Hyderabad and he took him to the petitioner herein. Pursuant to the said transaction, the complainant raised loans within the local jurisdiction of the Additional Judicial Magistrate of First Class, East and North, L.B.Nagar, Ranga Reddy District and sell away certain properties and thus alleged that part of cause of action also arose in the said local area. Therefore, it cannot be said that the Court at L.B.Nagar is not empowered to try the criminal cases. As per the investigation made so far, the petitioner committed certain similar acts in the city of Hyderabad and Vijayawada etc.

According to the complaints, the petitioners are admittedly the residents of the area of the concerned Court having jurisdiction for enquiry and trial of the matter in question. The only question that arises for consideration as to whether any part of the offence has been committed in the places where the complaints have been filed. According to the complaints lodged by the complainants when they were in search of funds for developing resorts in agricultural lands and for starting business and moving around the banks for obtaining loan, for that purpose, A-2 who is the resident of Koti, Hyderabad, accosted them and assured to provide funds through NRI funds and took them to the petitioner - A-1. Whether the said Anand Raj, A-2,

met the complainants within the local jurisdiction of the said Court or at Hyderabad is not clear. Even if it is not established that A-2 has not told them that he will provide funds within the local jurisdiction of the said Court the FIR cannot be quashed, as the police has to transfer the same either to the place of the concerned police station at Koti where A-2 resides or to the concerned police station at Bangalore, where petitioner-A-1 resides. Therefore, I am of the opinion that on the aforesaid contentions of the petitioners, the FIR cannot be quashed.

For the aforesaid reasons, I do not see any merits in the writ petitions. Accordingly, both the writ petitions are dismissed. No order as to costs.

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V.ESWARAIAH,J

Date: 14-02-2006.

Shr.